IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

MONDAY, THE 20TH AUGUST 2007 / 29TH SRAVANA 1929

OP.No. 9953 of 2003(I)

PETITIONERS:
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1. **T.V.MEENAKSHI, LIONGUARD, XXVI/337, CONVENT ROAD, THRISSUR**
2. **T.V.THYLAMBAL, LIONGUARD, XXVI/337, CONVENT ROAD, THRISSUR.**
3. **T.V.SESHADRI, LIONGUARD, XXVI/337, CONVENT ROAD, THRISSUR.**
4. **T.V.RAMACHANDRAN, LIONGUARD, XXVI/337, CONVENT ROAD, THRISSUR.**

BY ADV. SRI.JIJO PAUL,
SRI.BABU S. NAIR.

RESPONDENTS:
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1. **DISTRICT COLLECTOR, THRISSUR.**
2. **THE TAHSILDAR, ASSESING AUTHORITY UNDER THE BUILDING TAX ACT, TALUK OFFICE, THRISSUR**
3. **THE REVENUE DIVISIONAL OFFICER, THRISSUR.**

BY GOVERNMENT PLEADER SRI. MATHEW JOSEPH VADAKKEL.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 20/08/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P. NO. 17153/2003 IN O.P. NO. 9953/2003

DISMISSED

20/08/2007. **SD/- T.R.RAMACHANDRAN NAIR, JUDGE.**

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE PARTITION DEED, DTD. 27/02/1988.

EXT.P.2: COPY OF THE RELEASE DEED DT. 22/09/1992.

EXT.P.3: COPY OF THE ORDER OF ASSESSMENT REFERENCE NO. G2-31/95 DTD. 09/10/2001.

EXT.P.4: COPY OF THE ORDER NO. C1-16023/01/K. DIS. DTD. 29/08/2002 PASSED BY THE R.D.O., THRISSUR.

EXT.P.5: COPY OF THE REVISION PETITION DTD. 16/12/2002 BEFORE THE R.1.

EXT.P.6: COPY OF THE ORDER NO. EL-2/5 7215/2002/L. DIS. DTD. 13/01/2003.

EXT.P.7: COPY OF THE REVISION PETITION DTD. 21/01/2003 FILED BY THE PETITIONER BEFORE THE R.1.

EXT.P.8: COPY OF THE ORDER NO. C9-4148/2003/L.DIS. DTD. 25/02/2003 OF THE R.1.

EXT.P.9: COPY OF THE REVISED ASSESSMENT ORDER NO. G2-31/95/BT DTD. 29/11/2002.

RESPONDENT'S EXHIBITS: NIL.

//TRUE COPY//

prv.

T.R. Ramachandran Nair, J.

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O.P.NO.9953 of 2003-I

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Dated this the 20th day of August, 2007

JUDGMENT

The petitioners are brothers and sisters. The case of the petitioners is that they have constructed four apartments to be used as separate units, in a single building. They rely upon Exts.P1 and P2 to contend for the said position. It is further pointed out that as per the agreement between them, the cost of construction of each unit was to be borne by the respective petitioner who owns the flat. Ext.P3 is the order of assessment passed by the Tahsildar assessing the building tax. Against Ext.P3, an appeal was filed before the Revenue Divisional Officer which was disposed of by Ext.P4. The order contains two portions; one regarding construction of the building based on the claim that they have to be assessed separately. The other is the claim for assessment at the municipal rate. After rejecting the first contention, the second contention was accepted and the assessing authority was directed to pass fresh assessment order in terms of the municipal rates.

2. Challenging the main part of the order, the petitioners have filed Ext.P5 revision petition before the District Collector. By Ext.P6, the

District Collector informed them that their remedy is to challenge the assessment order issued by the Tahsildar, obviously after the remand. Accordingly, the District Collector was of the view that the revision petition cannot be entertained. Ext.P9 is the fresh order passed by the Tahsildar after remand.

3. Learned counsel for the petitioners submits that as far as the main question that is raised before the District Collector is concerned, no adjudication has been made by the District Collector in the revision petition filed by them. As far as the fresh order passed by the Tahsildar is concerned, it was based on the direction of the Revenue Divisional Officer to finalise the assessment based on municipal rates. Since the District Collector has not considered the main issue, learned counsel submits that a direction may be issued to the District Collector to consider Ext.P5 on merits.

4. The respondents have filed a counter affidavit justifying the assessment made. It is pleaded that to support their claim that the building consisted of four flats, no evidence has been produced by the petitioners. It is also pointed out that the assessing authority is bound to comply with the directions and instructions of the Board of Revenue as contained in Section 4(3) of the Kerala Building Tax Act. There were objections from the part

of Board of Revenue to the separate assessment of flats and apartments and there were instructions to revise separate assessment order and to assess such multi-storied flats or apartment as a single unit. Learned Govt. Pleader also relied upon the decision of this court reported in **P.P. Varghese v. Tahsildar** (ILR 2006 (2) Ker. 88) in support of the action taken by the respondents.

5. Learned counsel for the petitioner points out that in the light of the decisions of this court reported in **Bhattathiripad v. Tahsildar** (1994 (1) KLT 790) and **Lissy v. Tahsildar** (2000 (3) KLT 497), the building has to be assessed as four separate units and any direction issued by the Board of Revenue contrary to the legal principles, cannot be accepted at all.

6. I see force in the contentions raised by learned counsel for the petitioners that the revision petition Ext.P5 had to be disposed of on merits. It is a case where while the revision petition was pending, the remand order was complied with by the Tahsildar. Still the main issue that was considered by the assessing authority and the appellate authority was pending before the revisional authority and a decision on merits was necessary to finally determine the liability of the petitioners. Even after remand, if they are to file an appeal against the remand order, that will be

without any result, as the appellate authority has already passed an order Ext.P4 on the very same issue. Therefore, they cannot re-agitate the issue before the appellate authority again. Apart from that, the plea raised in paragraph 5 of the counter affidavit that the assessment has been finalised based on the instructions of the Board of Revenue, also cannot be accepted. The assessing authority has to approach the issue in the light of the legal principles reiterated by this court in the matter.

7. Therefore, Ext.P6 is quashed. The District Collector is directed to pass orders on the revision petition on its merits, within a period of four months from the date of receipt of a copy of this judgment. Till orders are passed and communicated to the petitioners, the interim stay granted by this court on 25.3.2003 will continue to be in force.

The original petition is allowed as above. No costs.

(T.R. Ramachandran Nair, Judge.)

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T.R. Ramachandran Nair, J.

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JUDGMENT

20th August, 2007.